

# **-- PRELIMINARY DRAFT --**

## **Conditional Rice Straw Burning Regulations**

### **Introduction and Overview**

The following preliminary draft regulatory proposal represents the Air Resources Board's conceptual outline of a possible framework for the Conditional Rice Straw Burning Regulations required by Health and Safety Code (HSC) section 41865. The purpose of this proposal is to encourage effective information exchange from all stakeholders at the two scheduled workshops on May 30 and June 1, 2000. The notice of these meetings can be accessed on ARB's Website at <http://www.arb.ca.gov/rice/rice.htm>. Hard copies of this notice may be requested by telephone at (916) 324-8622. The ARB hearing to consider this action will not take place until late September 2000. Therefore, it is expected that this early conceptual outline will evolve into a workable regulatory program reflecting input from many stakeholders in the Sacramento Valley Air Basin (Basin).

Existing law limits rice burning to the lesser of 25 percent of each grower's planted acreage or a total of 125,000 acres in the Basin. However, beginning in 2001, only burning for disease control will be allowed up to these limits. This new regulation must establish a program in the Basin that describes how rice growers must confirm the significant existence of disease prior to being issued a permit to burn by the air pollution control officer (APCO). The HSC assigns the county agricultural commissioners the important role of verifying that enough disease exists to warrant field burning. Once the agricultural commissioner has made such a determination, the APCO is authorized to issue a burn permit in accordance with HSC section 41865. The draft regulatory outline includes the following elements below:

- The Basinwide Air Pollution Control Council must develop an overall program for the review and approval of ARB's Executive Officer.
- Field inspections are required and may be conducted by growers, Pest Control Advisers, and other qualified individuals.
- All inspectors must be trained through an established training program.
- Inspectors and growers must follow specific inspection and reporting protocols and are subject to penalties for preparing or filing false documents.
- The agricultural commissioner must randomly verify the accuracy of inspection reports.
- The agricultural commissioner must make written findings on the potential quantifiable and significant impacts on rice yield resulting from disease.
- The APCO may not issue a burn permit until the agricultural commissioner certifies that enough disease is present to require burning.
- The Basinwide Air Pollution Control Council must submit annual reports.

For questions or comments regarding this draft proposal, please contact Paul Buttner at (916) 324-8622.

# **-- PRELIMINARY DRAFT --**

## **Title 17, Subchapter 2, Article 1 and Article 2.**

### **Article 1**

**Section 80100: No Changes Proposed**

**Section 80101: Definitions to be Added**

Rice Straw Burn Permit means a permit issued by an APCO to conduct one burn, on one field, within one year.

Qualifying disease means a rice disease which may cause significant yield loss and which CDFA finds is controlled or effectively managed by the burning of straw.

Nonqualifying disease means a rice disease which ARB and CDFA have jointly determined, based upon an annual review process, has other economically and technically feasible alternative means of elimination that are not substantially more costly to the conditional rice straw burn permit applicant.

Growing season means the period from seedbed preparation through crop harvest.

Quantifiable reduction in yield is defined as an estimated amount of decreased grain production expected from a given level of disease infection. This relationship shall be quantified in accordance with the criteria established in section 80156(d).

Significant reduction in yield is defined as an amount of decreased grain production equal to or exceeding X (the numeric value, X, shall be established in this regulation) hundredweight (cwt) of rice per acre of rice planted upon the field proposed to be burned.

**Sections 80102 – 80130: No Changes Proposed**

### **Article 2**

**Sections 80140 – 80155: No Changes Proposed**

*New Sections of Proposed Regulation as Follows:*

## **-- PRELIMINARY DRAFT --**

### **Section 80156: Conditional Rice Straw Burning Permit Program for the Sacramento Valley Air Basin.**

The Sacramento Valley Basinwide Air Pollution Control Council (Basinwide Council) shall, by December 31, 2000, develop and submit to the state board a proposed rice straw burning permit program (program) for the issuance of conditional rice straw burning permits (conditional permit) by the APCOs in the Sacramento Valley Air Basin. The program shall be adopted at a noticed public hearing of the Basinwide Council and shall implement and ensure compliance with the following requirements:

- (a) The APCOs in the Sacramento Valley Air Basin may grant conditional rice straw burning permits only after the county agricultural commissioner has determined, based upon inspection results, the existence of a qualifying disease that is likely to cause a significant, quantifiable reduction in yield.
- (b) The county agricultural commissioners shall document applicants' compliance with the following terms and conditions:
  - (1) The fields proposed for burning are specifically described.
  - (2) The applicant has not violated any provision of California Health and Safety Code section 41865 within the previous three years.
  - (3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease.
  - (4) The county agricultural commissioner makes a finding that the existence of the pathogen will likely cause a significant, quantifiable reduction in yield in the field proposed for burning during the current or next growing season.
- (c) The county agricultural commissioners, including, but not limited to, the following field verification requirements:
  - (1) Actual field verification of at least 20 percent of all inspection reports prior to making the finding in paragraph (a), above.
  - (2) Random on-site observation of at least 5 percent of actual field inspections.

## **-- PRELIMINARY DRAFT --**

- (d) The Basinwide Council shall establish and shall apply a quantitative methodology that will result in the county agricultural commissioners' consistent findings of *quantifiable reduction in yield*. The Basinwide Council, in consultation with CDFA and ARB, shall utilize an accredited agricultural scientific organization, such as the University of California Cooperative Extension, to determine the lowest level of inoculum and/or infection, for each qualifying disease, expected to result in significant reduction in rice yield (as defined in Section 80101). The scientists shall consider, but shall not be limited to, the following information:
- (1) The available literature and ongoing research for documenting the relationship between the level of occurrence of a pathogen and the resulting reduction in the rice yields.
  - (2) The average background level of qualifying disease present in the rice fields of the Sacramento Valley Air Basin.
- (e) The Basinwide Council shall develop detailed procedures for each inspection method proposed for adoption. Each procedure shall include, but is not limited to, the following information:
- (1) Protocol for inspection site selection.
  - (2) Number of required inspection sites.
  - (3) Methods of plant/soil collection.
  - (4) Methods storage, counting, and scoring of rice plants.
  - (5) Procedures for calculating percentage of disease at specific inspection sites and use of this information to estimate average percentage of disease in a total field.
  - (6) Requirement for 24-hour advance notice to the agricultural commissioner of the scheduled time and date of all field inspections.
  - (7) Acknowledgement of the agricultural commissioner's authority to be present to observe inspection activities and discretion to require additional inspection activities if deemed necessary.
- (f) Certified field inspectors shall complete a field inspection reporting form for each inspection method and the grower shall submit the reporting form, with an application, to the county agricultural commissioner. Each form shall include the procedures in paragraph (e), above. The county agricultural commissioner must

## **-- PRELIMINARY DRAFT --**

review and approve the submittal in accordance with the provisions of paragraph (c), above. Completed forms shall be filed in the county agricultural commissioner's office and made available for public inspection. Each inspection form shall include, but shall not be limited to, the following information:

- (1) Applicant's name.
- (2) Applicants ID number.
- (3) Mailing address (property address, city, state, and zip code).
- (4) Location of inspected property.
- (5) Business telephone and fax number.
- (6) Total planted rice acres.
- (7) Third party inspector information (name, license number and terms).
- (8) Inspection site description.
- (9) Acreage of area proposed for burning.
- (10) Estimated average disease infection level in the total area proposed for burning.
- (11) Total planted acreage.
- (12) Signature of applicant.
- (13) Signature of agricultural commissioner verifying compliance with 3(a)-3(d).
- (14) Signature of inspector.

### **Section 80157:            Inspection Training Requirements for Conditional Rice Straw Burning Permit Program for the Sacramento Valley Air Basin.**

- (a) The Basinwide Council, in consultation with CDFA and ARB, shall establish by agreement, a program to train field inspectors. The training program shall be implemented through an accredited agricultural educational facility, such as the University of California Cooperative Extension. Trainers shall be experienced agricultural professionals with extensive in-field pest inspection and identification experience. A technical review course shall be required every two years to maintain certification. Training certification shall be available to Pest Control Advisers (PCAs), growers, county agricultural commissioner's staff, and other qualified agricultural professionals. Except for registered PCAs, growers, and county

## **-- PRELIMINARY DRAFT --**

agricultural commissioner's staff, minimum qualifications for the training program certification shall be the following:

- (1) Four or more years of experience in the agricultural crop production industry, or
  - (2) A four-year college degree in biological science, agriculture, or related field, or
  - (3) Two or more years of college level education in biological science, agriculture, or related field and two or more years of experience in the agricultural crop production industry.
- (b) Inspectors who perform fraudulent inspections shall be subject to permanent revocation of certification and other penalties provided by law. Growers who file false reports shall be deemed in noncompliance with California Health and Safety Code section 41865 and subject to other penalties provided by law.
- (c) The certifications shall be issued by training facility, such as the University of California Cooperative Extension, shall be revocable for cause, and shall be based upon demonstrated knowledge of the following subject matter:
- (1) Commonly occurring qualifying and nonqualifying rice diseases.
  - (2) Life cycle or etiology of rice diseases.
  - (3) Inspection methods and their statistical limitations.
  - (4) Techniques of prioritizing suitable test methods based upon field and disease characteristics.
  - (5) Penalties associated with fraudulent inspections and/or related documentation.
  - (6) Estimation of acreage of fields, acreage of inspection areas, and acreage of disease infected areas.
  - (7) Webster's stem rot disease severity quantification protocol [citation to be added].
  - (8) Webster's soil inoculum potential protocol for stem rot [citation to be added].
  - (9) Disease survey and detection techniques.

**Section 80158:           Annual Reporting Requirements for Conditional Rice Straw  
Burning Permit Program for the Sacramento Valley Air Basin.**

## **-- PRELIMINARY DRAFT --**

- (a) Beginning in 2001 and annually thereafter, the Basinwide Council shall submit to the ARB and CDFA, by July 30, a statement indicating the total acreage of rice planted in each county of the Sacramento Valley Air Basin.
- (b) Beginning in 2002 and annually thereafter, the Basinwide Council shall submit to the ARB and CDFA, by April 30, a report on program implementation. The report shall include, but shall not be limited to, the following information, by county:
  - (1) General assessment of program operation.
  - (2) Total acres requested to be burned.
  - (3) Total acres determined by county agricultural commissioners to meet the terms and conditions for burning.
  - (4) Total acres approved for burning by the APCOs.
  - (5) Total acres burned.
  - (6) Total amount of planted acreage in the previous season.
  - (7) Number of enforcement actions initiated for fraudulent inspections, and resolution of each.
  - (8) Total amount of fees charged by each county agricultural commissioner.

### **Section 80159: State Approval Procedures for Conditional Rice Straw Burning Permit Program for the Sacramento Valley Air Basin.**

The Executive Officer shall approve, approve with conditions, disapprove, or indicate intent to disapprove any program, portion of a program, or amendment of a program within 120 days after submittal by the Basinwide Council. Reasons for disapproval, conditional approval, or intent to disapprove shall be provided to the Basinwide Council in writing. The Basinwide Council may resubmit an amended plan addressing the ARB's concerns within 90 days of the ARB's communication of disapproval, conditional approval, or intent for disapproval. If the Basinwide Council does not submit a program by March 1, 2001, or if the Executive Officer has not approved a program submitted by the Basinwide Council by May 1, 2001, the Executive Officer shall develop an alternative program or portion thereof. An approved program may be amended by the Executive Officer with 90 days prior notice, in writing, to the Basinwide Council. The

## **-- PRELIMINARY DRAFT --**

Basinwide Council may submit proposed program amendments to the Executive Officer for approval. The Executive Officer may request the submittal of program amendments from the Basinwide Council. No program, amendments, or portion thereof shall be implemented until approved in writing by the Executive Officer.